*** HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

+WRIT APPEAL Nos.627 & 628 OF 2005

–

% Dated 04-06-2007

The Managing Director,
State Bank of Hyderabad,
Hyderabad and another.

appellants

VERSUS

$ P.Kata Rao

Respondent

! Counsel for appellant : Shri Addepally Suryanarayana.

^Counsel for respondent : Shri P.Kata Rao,
party-in-person.

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? Cases referred

1. 1999)3 SCC 679
2. AIR 1960 SC 806
3. AIR 1965 SC 155
4. AIR 1969 SC 30

5. (1992) 4 SCC 711
6. (1996(6 SCC 417
7. (1997) 2 SCC 699
8. (2006) 5 SCC 446,
9. (1991) 1 SCC 504

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT APPEAL Nos. 627 and 628 OF 2005

Between:

The Managing Director,
State Bank of Hyderabad,
Hyderabad and another.

... Appellants

AND

P.Kata Rao

... Respondent

:COMMON JUDGMENT:

Counsel for the appellants : Shri Addepally Suryanarayana

Counsel for the respondent : Shri P.Kata Rao,
Party-in-person

-

Per C.V.Nagarjuna Reddy, J

The above-noted appeals arise out of order dated 7-2-2005 passed by the learned Single Judge in Writ Petition Nos.476 of 2001 and 25095 of 1999 and the same are being disposed of by a common judgment because the issues raised therein are inter-related.

The Facts:

The respondent entered the service of State Bank of Hyderabad (for short, 'the bank') on 17.12.1974 as Probationary Officer. After successful completion of the period of probation, he was confirmed. On 13.08.1988, the respondent was placed under suspension. After three years, he was served with memo dated 08.10.1991 for holding an enquiry under the State Bank of Hyderabad (Officers) Service Regulations, 1979 (for short, 'the Regulations') on the following charges:

> "**Charge No.1**: He failed to ensure that the loan amount was paid to/received by the borrower but misappropriated the same for himself.
>
> **Charge No.2:** He sanctioned two loans ostensibly in the name of Shri Dola Bangarappa, appropriated excess margin money to the accounts than eligible amount and withdrew the amounts for his benefit.
>
> **Charge No.3:** Although he raised debits on two occasions in the IRDP loan accounts, he disbursed the

amount in cash to the borrowers on one occasion and on the other occasion he afforded credit to 15 DIR/MTL/Current accounts without any authority from the IRDP borrowers. He thus failed to ensure that endues of the Bank finance. It is difficult to believe that he committed this act without deriving any pecuniary benefit. Further, he admitted vide his letter dated 11th May, 1988 that he paid an amount of Rs.5,000/- each to 36 IRDP beneficiaries when they gathered at his house and when there was a threat to his life indicating that such step was resorted to by the IRDP beneficiaries due to his above acts.

Charge No.4: He raised debits unauthorisedly in DIR loan accounts and remitted the amounts to two individuals and a firm viz. Venkateshwara Enterprises, although the activities of the borrowers are different viz. Rice business, pan shop, cycle and kirana. He, thus passed on the loan amounts including subsidy and margin money to unauthorised persons.

Charge No.5: He authorized opening of a current account by his relative Shri Y. Murthy, as Proprietor of M/s Naveen Enterprises and utilized the account to draw the amounts from such account opened. He thus abused his official position in collusion with the said Y. Murthy, to derive pecuniary benefit.

Charge No.6: He passed for cash payment a DIR withdrawal form without opening any such account in Bank records and without obtaining any documents therefor. He, thus, unduly benefited a borrower jeopardizing Banks interests.

Charge No.7: He unauthorisedly debited DIR accounts and appropriated the amounts to current account and cash credit accounts. He thus not only failed to ensure end-use of the Banks finance but also unduly benefited a few cash credit and current account parties.

Charge No.8: While releasing the loan amount to borrowers, he held the loan component in savings bank accounts opened in their names, which was later utilized to close the accounts. He thus failed to ground the

schemes but passed on the undue benefit of special central assistance to the borrowers unduly.

Charge No.9: He authorized opening of S.B. account in the names of borrowers, credited the loan components to the respective S.B. accounts and utilized the same to close the loan accounts in violation of H.O. Circ.No.AGR/31 of 1985 dated the1st July, 1985.

Charge No.10: He failed to ensure that the unit was established with the Bank but released the margin money and subsidy/special central assistance only.

Charge No.11: He authorized cash and transfer credits to the demand loan accounts against pledge of gold ornaments of Smt. P. Lakshmi, his wife, from out of proceeds of loan amounts released to two DIR and one cash credit borrowers. Thus he facilitated his wife to get undue pecuniary benefit by permitting unauthorised adjustments which were done with his prior knowledge.

Charge No.12: While releasing loan amounts, instead of remitting the proceeds to the suppliers, he appropriated the proceeds to a few loan accounts and issued drafts in a few other cases without the authority of the borrowers as evidenced by the cash transfer entries in Bank's payment and receipts register. He thus indulged to unduly benefit a few parties at the cost of the Bank.

Charge No.13: He appropriated an amount of Rs.42,493-75 to Shri K.S.N. Murthy's loan account which in fact is special central assistance released by S.C. Service Co.op Society, Visakhapatnam to five beneficiaries @ Rs.8,498-75 each.

He, thus, unduly passed on the benefit to a single individual and it is difficult to believe that he committed the above act without deriving pecuniary benefit.

Charge No.14: He flouted the instructions contained in H.O. Cir. Adv./55 of 1986 dated the 6th November, 1986 and sanctioned loans to two parties. He thus disregarded the instructions contained in H.O. Circular.

Charge No.15: He sanctioned and released loans to his close relatives in contravention of H.O.Cir.No.ADV/98 of 1976 dated the 2nd December, 1976.

Charge No.16: He failed to obtain control cards in respect of a few IRDP loan accounts, and he did not release the entire unit cost envisaged in the scheme but released lesser amounts and appropriated entire eligible subsidy amounts instead of appropriating proportionately as laid down in H.O.Cir.No.AGR/24 of 1985 dated the 10th May, 1985.

He, thus, failed to follow the instructions contained in H.O.Cir.P&C/12 of 1983 dated 05.03.1983.

Charge No.17: He charged interest @ 4% i.e. interest rate applicable to DIR advances although the unit cost envisaged, sanctioned and released is much higher than the eligibility under DIR Scheme as also paid the loan amount in cash instead of remitting the amount to suppliers.

He thus allowed leakage of income and unduly benefited the parties violating instructions contained in Cir.No.ADV/12 of 1984 dated 12.03.1984.

Charge No.18: In respect of 98 loan accounts sanctioned and released by him, he released amount only to the level of subsidy amount and thus failed to ground the schemes but passed on undue benefit of subsidy to the borrowers.

Charge No.19: In respect of 15 loan accounts he released in cash, the amounts even less than subsidy/margin money amounts credited and also charged interest applicable to DIR advances.

Charge No.20: In respect of 18 DIR accounts he effected credit of subsidy amount on the 16th January 1987 and released amounts just equal to subsidy and 16 loan accounts out of 18 were closed on the date of release of the loan.

He, thus, unduly passed on the benefit of subsidy to the parties without grounding the schemes."

Simultaneously, on a complaint made by the bank, the Central Bureau of Investigation registered a criminal case against the respondent. He represented for stay of departmental proceedings till the completion of

investigation by the Central Bureau of Investigation, but his request was turned down and he was proceeded ex parte. The enquiry officer submitted report with the finding that all the charges, except charges No.1 (a), 2(b), 3 and 5 are proved. General Manager (OPS) forwarded the record of enquiry to Chief General Manager (hereinafter referred to as 'the appointing authority') with the recommendation that the delinquent be dismissed from service. The appointing authority accepted the recommendation made by the General Manager and passed order dated 01.08.1994, whereby he confirmed the penalty of dismissal proposed against the respondent. While doing so, the appointing authority took into consideration gravity of the charges held established and past service record of the respondent, which included a penalty of withholding of increment due on 01.12.1988. The appeal preferred by the respondent against the order of dismissal was dismissed by the appellate authority constituted under the Regulations.

The respondent challenged his dismissal in Writ Petition No.16833 of 1994, which was disposed of by a learned Single Judge on 12.03.1999 with the direction that the competent authority shall pass fresh order after giving notice to the writ petitioner (the respondent herein). The learned Single Judge rejected the respondent's plea that the findings recorded by the enquiry officer and the General Manager were not based on legally admissible evidence, but accepted his contention that the disciplinary and appellate authorities committed a serious error by assuming that the penalty of stoppage of one increment with cumulative effect was subsisting. The learned Single Judge, after perusing the record produced before him, found that though the original authority imposed the punishment of stoppage of one increment with cumulative effect, the appellate authority modified the same into one of withholding of increment

without cumulative effect and held that failure of the disciplinary and appellate authorities to take into consideration modified punishment has caused serious prejudice to the respondent. On that premise, the learned Single Judge quashed the order of punishment and directed the appointing authority to issue a show cause notice to the respondent by indicating the modified punishment and pass appropriate order after considering the explanation, if any submitted by him. At the same time, the learned Single Judge directed that the petitioner shall not be entitled to reinstatement till the decision is taken by the appellate authority.

In the purported compliance of the direction given by the learned Single Judge, the appointing authority issued show cause notice dated 01.06.1999 to the respondent indicating therein that even though there is no ground for review of punishment of dismissal, he may submit representation within 15 days. The respondent sent a detailed representation, wherein he criticized the findings recorded by the enquiry officer and the earlier orders passed by the appointing authority and the appellate authority. Thereafter, the appointing authority passed order dated 02.07.1999, whereby it re-imposed the penalty of dismissal from service on the respondent. The appellate authority vide its order dated 02.02.2000, dismissed the appeal and upheld the order of punishment.

Feeling aggrieved by the aforementioned orders, the respondent filed Writ Petition No.476 of 2001 and pleaded that the impugned orders are liable to be set aside on the ground of violation of the rules of natural justice and arbitrary exercise of power. He also pleaded that the action taken against him is ultra vires the provisions of the Regulations.

It is also borne out from the record that after disposal of Writ Petition No.16833 of 1994, the respondent made several

representations for payment of subsistence allowance by contending that as a sequel to the setting aside of penalty, he has become entitled to get such allowance. The management of the bank did not accede to his request. He then filed Writ Petition No.25095 of 1999 for issue of a mandamus to the non-petitioners (the appellants herein) to pay him subsistence allowance for the period between the dates of his dismissal and adjudication of Writ Petition No.16833 of 1994.

By a common order dated 07.02.2005, the learned Single Judge disposed of Writ Petition Nos. 25095 of 1999 and 476 of 2001. He held that once the order of punishment was set aside by this Court, the respondent became entitled to the payment of subsistence allowance from the date of decision of Writ Petition No.16833 of 1994 till 02.07.1999 i.e. the date on which the appointing authority passed fresh order for dismissal of the respondent.

In Writ Petition No.476 of 2001, the learned Single Judge quashed orders dated 02.07.1999 and 02.02.2000 on the premise that in view of the order passed in Writ Petition No.16833 of 1994, the appointing authority was not entitled to impose penalty of dismissal or removal from service on the respondent and directed fresh consideration of the issue of punishment after giving opportunity of hearing to the respondent.

We have heard Shri Addepalli Suryanarayana, learned counsel for the appellants and Shri P. Kata Rao i.e. the respondent, who appeared in person.

We shall first take up Writ Appeal No.628 of 2005 in which the appellants have prayed for setting aside the direction given by the learned Single Judge for payment of subsistence allowance to the respondent. For deciding whether as a sequel to quashing of the order of dismissal in Writ Petition No.16833 of 1994, the respondent became

entitled to subsistence allowance till the passing of fresh order, it will be useful to notice Regulation 69 of the Regulations. The same reads as under:

> " **69.** (1) An officer may be placed under suspension by the Disciplinary Authority:
>
> (a) Where a disciplinary proceeding against him is contemplated or is pending: or
>
> (b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial.
>
> (2) If an officer who is detained under custody whether on a criminal charge or otherwise for a period exceeding forty-eight hours or is convicted of an offence to a term of imprisonment exceeding forty-eight hours is placed under suspension by an order of the Disciplinary Authority, it shall be open to the Disciplinary Authority to give effect to such suspension from a retrospective date not earlier than the date of such detention or such conviction.
>
> **Explanation:**
>
> The period of forty-eight hours referred to above shall be computed from the commencement of the imprisonment after conviction or detention and for this purpose, intermittent periods of imprisonment or detention, if any, shall be taken into account.
>
> (3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer under suspension is set aside in appeal or on review under regulation 69 and the case is remitted for further inquiry or action or with any directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.
>
> (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer under suspension is set aside or declared or rendered void in consequence of, or by, a decision of a Court of Law, and the Disciplinary Authority, on consideration of the circumstances of the case decides to hold further inquiry against him on the allegations on which the penalty of

dismissal, removal or compulsory retirement was originally imposed, the officer shall be deemed to have been placed under suspension by the Disciplinary Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made under this regulation shall continue to remain in force until modified or revoked by the authority which made the order;

(b) An order of suspension made under this regulation may at any time, be modified revoked by the authority which made the order.

(6) No leave shall be granted to an officer under suspension.

(7) (i) An officer who is placed under suspension shall be entitled to receive during the period of such suspension and subject to clauses (ii) and (iii) subsistence allowance equal to half of his substantive salary and such other allowances as the competent authority may decide.

(ii) During the period of suspension an officer may, at the discretion of the Bank, be allowed occupation of an official house upto a period of four months but shall not be entitled to free use of the Bank's car or receipt of conveyance or entertainment allowance or special allowance.

(iii) No officer who is under suspension shall be entitled to receive payment of subsistence allowance unless he furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

(8) (i) Where the Appointing Authority holds that the officer has been fully exonerated or that the suspension was unjustifiable, the employee shall be granted the full pay to which he would have been entitled, had he not been so suspended, together with any allowance of which he was in receipt immediately prior to his suspension or may have been sanctioned subsequently and made applicable to all officers. The period of absence from duty in such a case shall, for all purposes, be treated as period spent on duty.

(ii) In all cases other than those referred to in clause (i) above and where the officer has not been subjected to the penalty of dismissal the period spent under suspension shall be dealt with in such a manner as the Disciplinary Authority may decide and the pay and allowance of the officer during the period adjusted accordingly."

A reading of clause (4) of the above reproduced Regulation makes it clear that once the penalty imposed on the delinquent is set aside and the disciplinary authority decides to hold further enquiry against him, then he is deemed to have been placed under suspension with effect from the date of the order of penalty and remains under suspension until further orders. In terms of clause 7(i), the suspended officer is entitled to receive subsistence allowance equal to half of his substantive pay and such other allowance which the competent authority may decide. This is subject to sub-clauses (ii) and (iii) of clause (7) with which we are not concerned.

Learned counsel for the appellants heavily relied on the direction given by the learned Single Judge in Writ Petition No.16833 of 1994 that the writ petitioner (the respondent herein) shall not be entitled to reinstatement till the passing of fresh order and argued that he cannot be treated as suspended in terms of Regulation 16 (4) for the purpose of payment of subsistence allowance.

While we do not wish to go into the correctness or otherwise of the last-mentioned direction given by the learned Single Judge, the fact remains that even after quashing of his dismissal, the respondent could have been kept out of service by the disciplinary authority by invoking Regulation 69 which postulates deemed suspension of the delinquent officer. Then he would have automatically become entitled to the payment of subsistence allowance under sub-clause 7(i) of Regulation 69. In our considered view, the situation does not vary

merely because the learned Judge observed that the respondent is not entitled to reinstatement till a fresh order is passed by the competent authority. To put it differently, once the order imposing penalty on the respondent, as confirmed by the appellate authority, was set aside, Regulation 69 (4) and (7) got attracted and the respondent acquired the status of a suspended officer for the purpose of grant of subsistence allowance from 12.03.1999, the date on which the learned Judge disposed of W.P.No.16833 of 1994 till the appointing authority passed a fresh order on 02.07.1999.

In view of the above, we hold that the learned Single Judge did not commit any error by allowing Writ Petition No.25095 of 1999 so as to entitle the respondent to get subsistence allowance and Writ Appeal No.628 of 2005 is liable to be dismissed.

We shall now consider the issue raised in Writ Appeal No.627 of 2005. Shri Addepalli Suryanarayana assailed the order of the learned Single Judge by arguing that the same is based on a total misinterpretation of the order dated 12.03.1999 passed in Writ Petition No.16833 of 1994. Learned counsel pointed out that the dismissal of the respondent was set aside by the learned Single Judge only on the ground that the appointing and appellate authorities failed to take note of the fact that the penalty of stoppage of one grade increment with cumulative effect imposed in an earlier disciplinary case had been modified and substituted with the stoppage of one increment without cumulative effect. He submitted that while setting aside the order of dismissal in Writ Petition No.16833 of 1994, the learned Single Judge directed the appointing authority to reconsider the matter with reference to the modified penalty of stoppage of one increment without cumulative effect imposed on the respondent in the earlier proceedings and, therefore, Writ Petition No.476 of 2001 could not

have been allowed by assuming that the appointing authority did not have the power to impose the penalty of dismissal or removal from service on the respondent.

Shri P. Kata Rao supported the order under challenge and argued that the learned Single Judge did not commit any illegality by quashing the order of dismissal.

We have given serious thought to the respective arguments and carefully gone through order dated 12.03.1999 passed in Writ Petition No.16833 of 1994 whereby, while setting aside the order of punishment, the learned Single Judge directed the appointing authority to issue show cause notice to the writ petitioner (the respondent herein) by indicating the modified punishment imposed on appeal in the earlier proceedings and then take appropriate action in accordance with law. This is evinced from the operative portion of that order, which reads as under:

> "I therefore set aside the punishment to the extent indicated above and direct the disciplinary authority to issue a show cause notice to the petitioner by indicating the modified punishment imposed on appeal in the earlier proceedings within two weeks from today. On receipt of the explanation from the petitioner to the show cause notice, the disciplinary authority is directed to take appropriate action in accordance with law within two weeks thereafter. The petitioner is not entitled to reinstatement till the decision is taken by the appellate authority.
>
> With the above observations the writ petition is allowed. No costs."

There is nothing in the afore-extracted operative portion or the body of order dated 12.03.1999 passed in Writ Petition No.16833 of 1994 from which it can be inferred that the learned Single Judge imposed any restriction on the bank in the matter of quantum of

punishment to be imposed on the respondent after reconsideration of the matter. Any such direction by the Court would have been uncalled for and unwarranted. Therefore, observation made by the learned Single Judge in the order passed in Writ Petition No.476 of 2001 that in the earlier proceedings, the discretion of the appointing authority in the matter of imposing penalty on the respondent was restricted, is clearly erroneous and he committed a serious error by quashing the order of dismissal on the premise that order dated 12.03.1999 passed in Writ Petition No.16833 of 1994 had the effect of restricting the power of the appointing authority to impose penalty other than the one of dismissal or removal.

In view of the above conclusion, we may have allowed the appeal and set aside the order under challenge in its entirety, but in the peculiar facts of this case, we are convinced that the issue relating to dismissal of the respondent needs reconsideration.

A recapitulation of the facts shows that the respondent was subjected to disciplinary and criminal proceedings simultaneously and his request for stay of the departmental proceedings was rejected by the bank. The facts brought on the record of this appeal show that the criminal case instituted against the respondent resulted in his conviction by the Special Judge for ACB and CBI Cases, Visakhapatnam for the offences punishable under Section 477-A of the Indian Penal Code and Sections 5(1)(d) and Section 5(2) of the Prevention of Corruption Act and he was sentenced to rigorous imprisonment for a period of six months and to pay a fine of Rs.5,000/- and in default to undergo two months simple imprisonment, and also to suffer rigorous imprisonment for one year and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for three months respectively. The respondent challenged his conviction and sentence in Criminal Appeal No.12 of 1996, which was allowed by a

learned Single Judge of this Court vide his judgment dated 03.10.2001. The learned Single Judge analyzed the entire evidence and held that the respondent had dutifully disbursed the loan amounts to 95 beneficiaries; that there was no loss to the bank or any pecuniary benefit was derived by the respondent; that the respondent did not have any intention to benefit himself or other person; that the erroneous entries made in the account books were not willful or actuated by fraudulent intention to falsify the accounts and held that the allegation levelled against the appellant (the respondent herein) cannot be treated as proved. On the strength of these and other reasons contained in the judgment, this Court allowed the appeal and set aside the conviction and sentence imposed on the respondent by the Special Judge for ACB and CBI Cases, Visakhapatnam.

Since the appeal filed by the respondent against his conviction and sentence by the trial Court was pending at the time of disposal of Writ Petition No.16833 of 1994 and passing of fresh order by the appointing authority, neither the learned Single Judge nor the appointing authority, which re-considered the matter in the light of the direction given by this Court, had the occasion to consider the findings recorded by this Court in its judgment dated 03.10.2001 in Criminal Appeal No.12 of 1996.

Generally speaking, acquittal of an employee, who is dismissed or removed from service in furtherance of disciplinary action taken by the employer, in a criminal case does not,

ipso facto, entitle him to seek reinstatement because it is settled law that the degree of proof required for holding a delinquent employee guilty of the charge of misconduct is substantially different than the one required for holding a person guilty of criminal offence. (See **Nelson Motis v. Union of India (1992) 4 SCC 711, Senior Superintendent of Post Offices v. A.Gopala (1989) 2 SCC 711,** and **South Bengal**

State Transport Corporation v. Sagar Kumar Mitra (2006) 2 SCC 584). However, the situation would be different if the departmental and criminal proceedings are founded on the same set of allegations and the evidence produced during the two proceedings is common. In such a case, honourable acquittal in the criminal case will definitely have impact on the result of the disciplinary action.

In **M. Paul Anthony v. Bharat Gold Mines Limited and Another**[1], the Supreme Court dealt with a case in which the facts are almost identical to the facts in the present case. In that case also both the departmental and criminal proceedings were initiated with respect to the same charges. The charged employee made a representation for dropping/postponing the enquiry till the completion of the criminal proceedings. Rejecting the said request, the employer proceeded with the departmental enquiry ex parte and enquiry officer found him guilty. Accepting the findings of the enquiry officer, the disciplinary authority dismissed the employee from service. Later the employee was acquitted in the criminal case and he approached the employer with a request for reinstatement on the ground of acquittal. The said request was rejected on the ground that the employee was already dismissed from service on the completion of the departmental enquiry, which was conducted independent of the criminal case and, therefore, the judgment passed by the criminal Court acquitting him was of no consequence. The appeal filed by the delinquent was dismissed by the appellate authority. He then filed writ petition in the High Court of Karnataka which was allowed by the learned Single Judge with an observation that the proceedings of departmental enquiry should have been stayed till the result of the criminal case. The learned Single Judge also took cognizance of the appellant's acquittal and held that the disciplinary authority could not have refused to reinstate him. On

appeal, the Division Bench set aside the order of the learned Single Judge. The Supreme Court considered the earlier judgments in **Delhi Cloth & General Mills Ltd., v. Kushal Bhan**[2] , **Tata Oil Mills Co. Ltd. v. Workmen**[3], **Jang Bahadur Singh v. Baij Nath Tiwari**[4], **Nelson Motis v. Union of India**[5], **State of Rajasthan v. B.K.Meena**[6], **and Depot Manager, APSRTC v. Mohd. Yousuf Miya**[7] and culled out the following propositions of law:

> "(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
>
> (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
>
> (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
>
> (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.
>
> (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest."

The Supreme Court then considered the facts of that case and held:

"There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, "the raid conducted at the appellant's residence and recovery of incriminating articles there from." The findings recorded by the enquiry officer, a copy of which has been placed before us indicate that the charges framed against the appellant ere sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand.

Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case." (Emphasis added)

In **G.M. Tank v. State of Gujarat**[8], the Supreme Court reiterated the proposition laid down in **Capt. M. Paul Anthony's case** (supra) and quashed the order of dismissal of the appellant on the ground that he had honourably been acquitted in the criminal case. The facts of that case show that that "the appellant was charged for the offence of acquisition of movable and immovable properties disproportionate to his known sources of income. After holding enquiry, he was dismissed from service. The writ petition and letters patent appeal were dismissed by the Gujarat High Court. In the

criminal case, he was honourably acquitted with the finding that the prosecution has failed to prove the charge. While allowing the appeal preferred by the appellant against the judgment of the Gujarat High Court, the Supreme Court held:

> "This is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The investigating officer and other departmental witnesses were examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. The judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand……Thus, as the facts and evidence in the departmental as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though the finding recorded in the domestic enquiry was found to be valid by the courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in ***Paul Anthony*** case will apply."
>
> (underlining is ours)

In the present case, we find that the enquiry officer had exonerated the respondent of charges 1(a), 2(b), 3 and 5, which pertain to misappropriation and deriving of pecuniary benefits by him.

A perusal of the judgment dated 03.10.2001 passed by the learned Single Judge in Criminal Appeal No.12 of 1996 makes it clear that the respondent was honourably acquitted with an unequivocal finding that there was neither any loss to the bank nor any pecuniary benefit was taken by the respondent. Thus, on the crucial issue whether the respondent is guilty of financial misfeasance and malfeasance, there is no conflict between the findings of the enquiry officer and the Court, which disposed of the criminal appeal. Since the learned Single Judge, who decided Writ Petition No.16833 of 1994 and the appointing authority, which reconsidered the matter in the light of the direction given by this Court, did not have the benefit of considering the judgment of acquittal rendered in Criminal Appeal No.12 of 1996, the only appropriate course would be to direct the appellants to again consider the respondent's case and pass appropriate order in accordance with law.

One more aspect of the case deserves our consideration. A perusal of orders dated 2-7-1999 and 2-2-2000 shows that in the opinion of the appointing and appellate authorities, the reduction in pay even without cumulative effect is also one of the major penalties. While forming such opinion, both these authorities failed to notice the law laid down by the Supreme Court in **Kulwant Singh Gill v. State of Punjab**[9] wherein it was held that though in the service regulations of the employer, the penalty of withholding of increments with cumulative effect was shown under minor penalties, as it results in serious detriment to the employee, such a punishment should be considered as a major penalty.

In the result, Writ Appeal No.627 of 2005 is dismissed and Writ Appeal No.628 of 2005 is disposed of with the direction that the appointing authority shall reconsider the case of the respondent on the

issue of quantum of punishment to be imposed on him and pass appropriate order within six weeks from the date of receipt of copy of this judgment. While doing so, the concerned authority shall keep in view the following factors:

i) Both the disciplinary authority and this Court in Criminal Appeal No.12 of 1996 found the respondent not guilty of charges of misappropriation, deriving the personal benefit for himself and causing loss to the bank.

ii) The effect of the Judgment of this court in Criminal Appeal No.12 of 1996 in the light of the decision of the Supreme Court in **M. Paul Anthony's case (supra)** and **G.M. Tank's case (supra).**

iii) Modified punishment of withholding of increment without cumulative effect imposed on the respondent is a minor penalty unlike the punishment of withholding of increment with cumulative effect, which was held to be a major penalty by the Supreme Court in **Kulwant Singh Gill's case (supra).**

iv) While considering the proportionality of the punishment, distinction lies between the procedural irregularities constituting misconduct from the acts of misappropriation of finances, causing loss to the institution etc.

C.V.NAGARJUNA REDDY, J

Date:

G.S.SINGHVI, CJ

mdaa

[1] (1999)3 SCC 679

[2] AIR 1960 SC 806

[3] AIR 1965 SC 155

[4] AIR 1969 SC 30

[5] (1992) 4 SCC 711

[6] (1996(6 SCC 417

[7] (1997) 2 SCC 699

[8] (2006) 5 SCC 446,

[9] (1991) 1 SCC 504